

Message

From: Mutter, Andrew [mutter.andrew@epa.gov]
Sent: 12/18/2018 8:53:32 PM
To: Benevento, Douglas [benevento.douglas@epa.gov]
Subject: FW: News Clips, 12/18/19

From: Jones, Enesta
Sent: Tuesday, December 18, 2018 1:53:26 PM (UTC-07:00) Mountain Time (US & Canada)
To: AO OPA OMR CLIPS
Subject: News Clips, 12/18/19

Acting Administrator

POLITICO Pro: EPA's Wheeler steers clear of scandals as he rewrites rulebook

Air

Bloomberg Environment: 2019 Outlook: How Many Lives EPA Rules Save Comes Down to the Counting

E&E: Years-in-the-making ozone litigation hits D.C. Circuit

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Inside EPA: Despite Past Filings, Sterigenics Avoids Filing Reports To EPA's TRI

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Chemicals

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Shutdown

E&E: White House backs off shutdown threat

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E&E: Federal advisory on PFAS may be too weak: Mich. panel

VICE News: How Newark got lead in its water, and what it means for the rest of America

Bloomberg Environment: 2019 Outlook: How Many Lives EPA Rules Save Comes Down to the Counting

By Abby Smith and Amena H. Saiyid

- Industry wants limits on how EPA considers co-benefits of fine particles in air, climate rules
- Agency changes to math in climate, mercury proposals will face separate legal challenges

Businesses chafing at EPA air pollution requirements have long complained the agency inflates the health benefits its rules achieve, and 2019 will give the Trump team several chances to make lasting changes to that accounting.

The Environmental Protection Agency is readying a multi-pronged effort that would limit the use of “co-benefits”—reductions in pollutants that aren’t directly regulated—to justify the cost of requiring new air pollution controls.

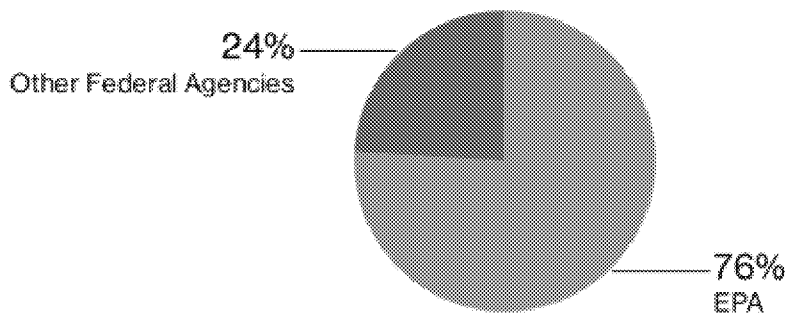
Those additional benefits sometimes account for the majority of the health protections the EPA touts. Restricting their consideration, particularly for airborne particles, would severely hamper the EPA’s efforts to set stricter carbon dioxide and air quality limits for power plants and other industries going forward.

“Why do you rob the banks? Because that’s where the money is,” Joe Johnson, executive director for federal regulatory process review and analysis for the U.S. Chamber of Commerce, told Bloomberg Environment. “Why do you want to look at the Clean Air Act and [fine particulate matter]? Because that’s what EPA uses for everything it does.”

Fine particle pollution—soot, smoke, or other particles—has been linked to health issues such as aggravated asthma and heart attacks.

EPA Rules Drive Regulatory Benefits

Monetized benefits of major federal regulations from Oct. 2006 to Sept. 2016



Source: Office of Management and Budget

Bloomberg Environment

Proposal Possible in May

The EPA plans to overhaul the way it calculates the benefits of its rules, with a proposal possible as early as May. The agency is sifting through input on the issue following a spring 2018 [advance notice](#) (RIN:2010-AA12). But it isn’t waiting on that proposal to make changes.

At the same time, the EPA in 2019 is tackling co-benefits as it addresses a U.S. Supreme Court order that it justify the costs of setting toxic pollution limits for power plants and sets about replacing Obama-era greenhouse gas rules for the power industry with a more modest alternative.

It is a risky strategy because those efforts will inevitably spark legal challenges and a court loss on any one could undermine the upcoming cost-benefit rule.

“I could guarantee that any regulation at stake that explicitly decides not to consider co-benefits would be enormously vulnerable,” Richard Revesz, a law professor at New York University and director of the Institute for Policy Integrity, told Bloomberg Environment.

But the EPA’s top air official said the agency has abundant authority to address fine particulate matter directly, through air quality standards, rules to stop pollution from blowing across state lines, and other regulatory tools.

Thus, it doesn't need those reductions to be the focus of other rules such as the EPA's mercury and air toxics, or MATS, rule.

"I don't need MATS to do a bank shot to get [fine particle] emissions reductions," Bill Wehrum, the EPA's air chief, told Bloomberg Environment in an interview. "I can do it directly and do it directly all the time where it's needed and where the legal authority exists under the ambient air quality control part of the" Clean Air Act.

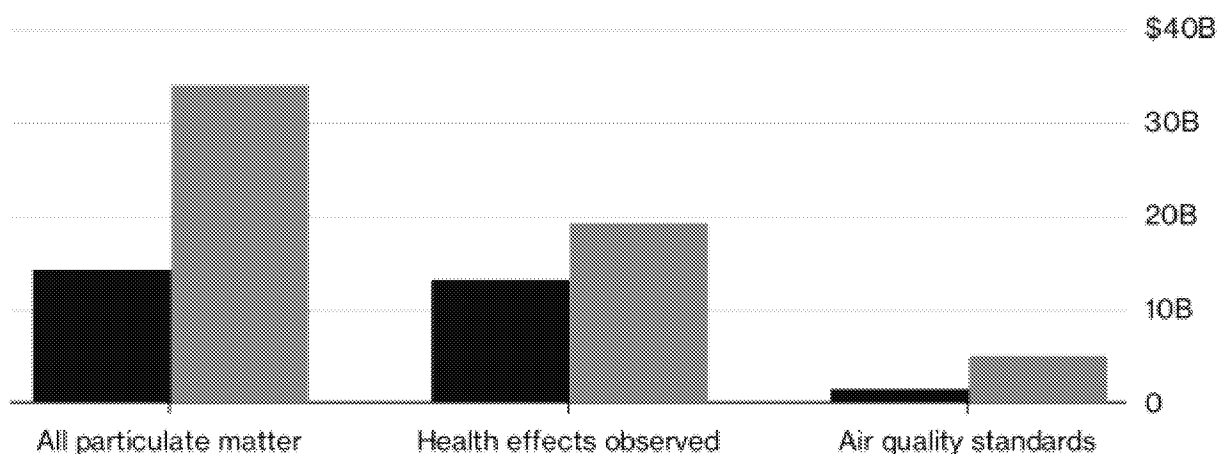
The EPA also thinks about regulatory calculations in ways beyond balancing overall costs and benefits, Wehrum added. Oftentimes, the EPA is instead looking at how cost-effective controlling an additional ton of emissions reductions is, he said.

Clean Power Plan Repeal

Clean Power Plan Repeal

Health benefits in billions lost from Clean Power Plan repeal

■ Low End ■ High End



Source: EPA

Bloomberg Environment

Likely the first to face scrutiny is the EPA's March 2019 plan to repeal the Clean Power Plan, Obama-era carbon controls on existing power plants.

In its October 2017 [proposal](#) (RIN:2060-AT55), the EPA previewed a new approach to counting particulate matter co-benefits.

The EPA typically considers all of the health benefits of its rules, even if pollution falls to levels below federal air quality standards. But in a [regulatory impact analysis](#) for the October proposal, the EPA considered two additional scenarios.

One would count only the benefits of reducing particulate matter to the lowest level where health effects are observed. The other would discount any benefits from reducing air pollution below national air quality standards. Those options resulted in smaller amounts of co-benefits associated with cutting power sector's greenhouse gases.

The EPA has acknowledged that particulate pollution affects people at all levels since the Reagan administration, but the latest proposal doesn't offer a new scientific explanation for the reversal, critics said.

“Since the 1970s, it’s been clear that [fine particulate matter] doesn’t have a threshold below which there are no adverse outcomes,” Revesz said.

Affordable Clean Energy Rule

The EPA took the same approach in analysis for its Affordable Clean Energy proposal (RIN:2060–AT67), which would replace the Clean Power Plan with narrower carbon controls. That could draw lawsuits as soon as March 2019, when the EPA plans to finish the rule.

The approach is a step in the right direction, but the EPA should take a more focused view, the Chamber’s Johnson said. Federal air quality standards are the EPA’s primary tool to address particle pollution. EPA rules shouldn’t claim substantial benefits of particulate matter reductions as part of other air and climate regulations, he added.

That would be in line with 2003 White House budget office guidance, Johnson said. But not everyone agrees.

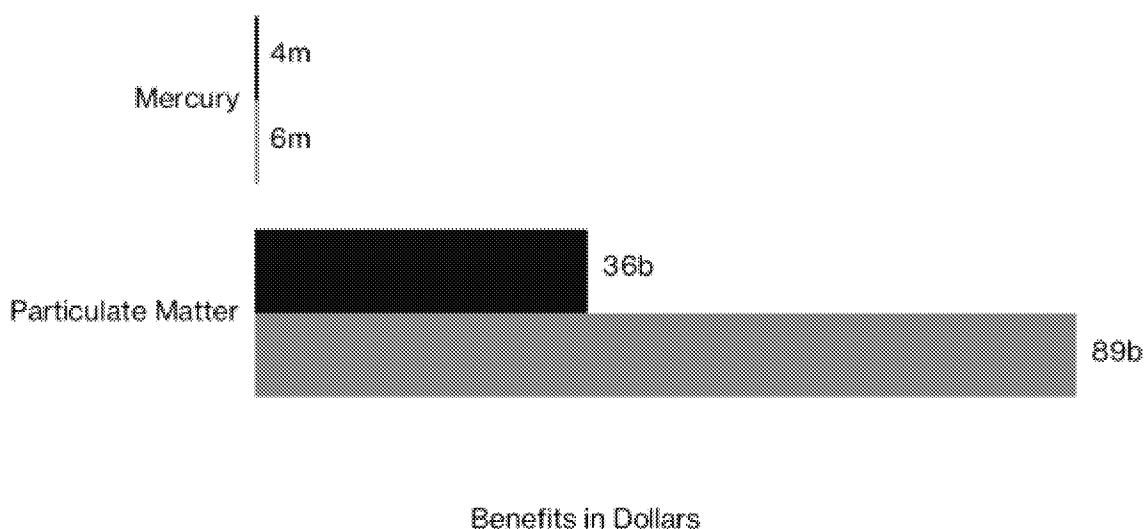
The guidance, Circular A-4, “leaves no ambiguity about this. You should count co-benefits,” Joseph J. Cordes, an economics professor at George Washington University, told Bloomberg Environment.

Mercury Rule

2012 Mercury and Air Toxics Rule

Comparing direct benefits of mercury cuts versus indirect benefits of capturing particulate matter.

■ Low end ■ High end



Source: EPA

Bloomberg Environment

One of the most direct considerations of the benefits of additional pollution reductions will come when the EPA responds to a Supreme Court order directing it to include compliance costs in its decision to retain or weaken mercury pollution standards for power plants.

As much as 89 percent of the 2012 rule’s health benefits came from reducing fine particles, which weren’t directly regulated, according to EPA estimates.

Power plants have already met the standards, and the EPA said it won't change the requirements. But environmental advocates see the reconsideration as a prelude to weaker limits.

"Why go through the paper exercise if your ultimate goal is not to undermine the standards itself?" Graham McCahan, senior attorney with Environmental Defense Fund, told Bloomberg Environment.

If the EPA considers a fuller range of costs but limited benefits, critics say it could serve as a litmus test for how courts view this approach.

Restricting those additional benefits, ironically, would make the Trump administration guilty of what it and industry groups accused the Obama EPA of: manipulating cost-benefit reviews, Brendan Collins, a partner with Ballard Spahr LLP in Philadelphia, told Bloomberg Environment.

The result "will be to reject regulatory action by hiding behind a lopsided cost-benefit analysis," he said.

CBS New York: Schumer Calls For Ban On Highly Toxic Chemical Still Available On Store Shelves

December 17, 2018

FARMINGDALE, N.Y. (CBSNewYork) – There's been a call Monday to ban a highly toxic chemical in a paint-stripping product that can kill.

The Environmental Protection Agency was moving toward banning the chemical, but it hasn't yet happened.

The issue could soon be taken up in Congress.

Some big box stores have voluntarily pulled them from the shelves, but it's not hard to still buy paint stripper containing methylene chloride, CBS2's Carolyn Gusoff reported. The chemical has been implicated in 64 deaths since 1980, according to saferchemicals.org.

(Map by saferchemicals.org)

"I was shocked. I mean, how is it that you can find something that will kill you instantly and, buy it, just off the shelf?" said Brian Wynne. His brother Drew died last year while resurfacing a floor in South Carolina while using the product "Goof Off."

The highly toxic chemical, which is in other brands too, also sickened 28 people in the New York area in the last three years.

The Wynne family created an online petition calling on big box stores to stop selling the chemical: Walmart and Lowe's have pulled it.

An expected EPA ban of methylene chloride has gone nowhere, Gusoff reported.

Sen. Charles Schumer faults EPA leadership.

“Instead of protecting the environment and health has spent a lot of time protecting special interest, my guess is someone who makes methylene chloride some one who has gotten to EPA,” Schumer said.

Schumer is cosponsoring legislation to ban the chemical if the EPA doesn’t act.

The industry opposes a ban, but says it wants the products used correctly, with adequate ventilation.

“The DIY users who have died using the product ignored the fact that you must have adequate ventilation or used them for bathtub stripping,” said Faye Graul, executive director of Halogenated Solvents Industry Alliance, Inc.

Product labels have new warnings, which home improvement contractor Fernando Cordova heeds.

“It could kill you, it’s the end game, you should be careful about what you use and read the instructions,” Cordova said.

Some say labeling isn’t enough.

“Industry has a much greater responsibility than labeling a toxic chemical that can actually kill us, they need to take it off the shelves,” said Andrienne Esposito of the Citizens’ Campaign for the Environment.

Drew Wynne’s brother agrees.

“My brother didn’t need to die,” Brian Wynne said.

Until Schumer’s bill is introduced in October, he says consumers should at least be aware there’s a product you can pick up at the hardware store that, if used incorrectly, can kill you.

The EPA had previously said the new labeling is not enough.

CBS2 has reached out to W.M. Barr, the manufacturer of Goof Off and other paint stripping products, but they did not respond.

E&E: White House backs off shutdown threat

George Cahlink and Geof Koss, E&E News reporters

Published: Tuesday, December 18, 2018

The White House won't force a government shutdown at the end of this week to get border wall funding, likely averting the threat of furloughs for thousands of federal workers just before the holidays.

White House press secretary Sarah Huckabee Sanders said this morning on Fox News that the administration is reversing course and has come up with other options for securing the money needed for the barrier.

"At the end of the day, we don't want to shut down the government; we want to shut down the border," said Sanders, who did not explain exactly how the administration would come up with the \$5 billion it wants.

President Trump has insisted he needs the money in fiscal 2019 for building the wall along the U.S.-Mexico border and told Democratic leaders last week he would be "proud" to shut down the government to press his case.

While a shutdown is off the table, Congress will still need to pass spending legislation by Friday, when current funding expires, to ensure agencies remain open. It's not clear exactly how lawmakers will proceed.

Senate Appropriations Chairman Richard Shelby (R-Ala.) said the final outcome remains "fluid," with negotiations ongoing among congressional leaders. He said there is "strong hope" that a deal will be reached to prevent a shutdown.

Shelby, however, stopped short of declaring any sort of victory. "I'll feel better when [a deal's] concrete. Right now, a lot of ideas are floating."

Sen. John Boozman (R-Ark.), a senior appropriator, said he's "optimistic" a funding deal will emerge in coming days. "Not exactly sure where that's going to be right now. I do think people are working hard to come to a solution," he said.

Boozman said one option could be to reprogram fiscal 2019 dollars already marked for the Defense Department for the border wall. He suggested lawmakers could frame it in terms of "border security," which could entail more than building a physical barrier and might be more palatable to Democrats.

Congress has not passed seven of the 12 fiscal 2019 spending bills, including the Interior-EPA and Commerce-Justice-Science measures. The Energy Department spending bill was signed into law before this fall's elections.

Among the options is moving an omnibus with six fresh spending bills, save for Homeland Security, which carries the border dollars and could see its appropriation extended at current levels.

Another possibility would be a temporary extension into January for all agencies, which would leave it to the next Congress to finalize fiscal 2019 spending.

If Congress were to move an omnibus, other potential legislation could be attached, including an extension of the Land and Water Conservation Fund, public lands bills, renewable tax extenders and disaster aid.

Any accord also could help the Senate to move on a backlog of judicial and executive branch nominees.

E&E: Years-in-the-making ozone litigation hits D.C. Circuit

Ellen M. Gilmer, E&E News reporter

EPA offered a steady defense today of Obama-era ozone standards the agency previously considered scrapping.

During long-awaited oral arguments at the U.S. Court of Appeals for the District of Columbia Circuit, government lawyers defended the agency's 2015 thresholds for the air pollutant as "forward progress" aimed at protecting vulnerable people.

"The revised ozone standards here represent notable forward progress in protecting the health of all Americans across this country," Justice Department attorney Justin Heminger told a three-judge panel this morning.

The Trump administration's defense of the 2015 rule, which marked 70 parts per billion as the highest acceptable amount of ground-level ozone under the Clean Air Act, comes after more than a year of uncertainty over whether EPA would try to loosen the standard to please industry players.

Ultimately, EPA agreed to stick with 70 ppb, a decision that prompted today's unlikely standoff between the agency and some of the president's most ardent supporters, including Murray Energy Corp. (*Greenwire*, Dec. 17).

Lawyers for the agency fended off complaints from industry parties and mostly conservative states that the ozone standard is simply impossible to achieve, given existing levels of background ozone that states cannot control. EPA also pushed back on environmentalists' claims that the threshold is not strong enough.

The question of whether EPA should accommodate background levels — that is, ozone that has drifted across borders or formed from natural sources — when setting National Ambient Air Quality Standards for ozone is especially relevant now as the agency conducts its next five-year review of the threshold.

Arizona Solicitor General Dominic Draye, representing litigants who think the 2015 levels are too tough, argued today that EPA's decision to ignore background ozone levels when setting the 70-ppb standard is irrational and unfair to states and companies trying to comply. Places suffering from high levels of background ozone beyond their control are deemed "nonattainment areas" under the NAAQS and then saddled with onerous permitting requirements.

"EPA could ... set a standard that's defined as background-plus-20 parts per billion or whatever," he said, noting potential alternative approaches. "The point is that this lack of creativity is a function of sloppy and hasty rulemaking."

At least two judges on the panel aired skepticism about the argument. Judge Thomas Griffith asked Draye to point out what provision in the Clean Air Act requires EPA to build in background levels to ozone standards.

Griffith, a George W. Bush appointee, noted that certain parts of the law address EPA's consideration of background ozone at a later stage, in implementation regulations that follow the agency's determination of a

threshold, "which suggests that that's where you pay attention to background ozone and that it's not necessary to do so when you're establishing NAAQS in the first place."

Dominic said he reads the provisions the opposite way, as evidence that Congress didn't intend for states to be on the hook for ozone they can't control.

Judge Nina Pillard, an Obama appointee, challenged Dominic with EPA's key argument: "The agency is saying it's not considering background ozone as an excuse not to come up with a level requisite for the public health."

Simi Bhat, another DOJ lawyer representing EPA, maintained that the Clean Air Act doesn't *require* the agency to select easier ozone targets to accommodate background levels, but rather requires the agency to protect public health and welfare.

She sidestepped a question, however, about whether EPA is *permitted* to consider background ozone, responding that the issue simply isn't before the court at this time. EPA is weighing that question for its next five-year standard, and the courts can decide the issue after that, she said.

Earthjustice attorney Seth Johnson urged the court to take this opportunity to resolve the debate. He argued that the Clean Air Act gives EPA "no authority whatsoever" in setting standards.

"That's not an issue we need to reach in this case, though?" Griffith asked. "You'd like us to."

"It would be efficient," Johnson said to laughter. "And it would be proper."

Pushing for a stricter standard

The D.C. Circuit also grappled with arguments today that EPA's 2015 ozone levels are not tough enough.

Environmentalists say the agency failed to justify its decision to opt for the least stringent level of a range recommended by outside experts advising the agency on the issue. They question EPA's methodology and say its approach results in adverse health effects, including allowing areas to greatly exceed permitted levels of ozone many days or weeks each year.

Ozone contributes to the formation of smog, which can cause severe breathing problems in children and people with asthma.

The judges pelted Johnson, the Earthjustice lawyer, with technical questions about EPA's analysis. Judge Robert Wilkins, an Obama appointee, pressed him on the limits of environmentalists' arguments.

"Are you saying that the statute requires them to set the standard such that ... to be in compliance, the area can never exceed that standard on any given day?" he asked.

Johnson skirted a direct answer but maintained that the Clean Air Act requires EPA to set a standard that ensures the "absence of adverse effects" on public health.

"EPA hasn't done that here," Johnson said. "EPA has set a standard that it knows allows adverse health effects."

The court appeared somewhat more receptive to environmentalists' claims that EPA did not adequately justify its secondary ozone standard — the threshold for protecting plants and animals, which is also set at 70 ppb.

The judges repeatedly questioned DOJ lawyer Heminger on why EPA opted for a methodology that differed from the approach recommended by outside advisers at the Clean Air Scientific Advisory Committee.

Heminger explained that the agency looked at various measures of vegetation effects and used one — tree growth loss — as a surrogate to analyze broader impacts of ozone. It did not consider another measure — leaf damage — to be detailed enough to inform the standard. Pillard questioned the approach.

"I just don't see where EPA has grappled with that," she said. "Given the damage, given the determination that this is an important element of the public welfare, it reads as if it's dropped off the table."

E&E: EPA watchdog to audit risk reviews for toxic emissions

Sean Reilly, E&E News reporter

Published: Tuesday, December 18, 2018

EPA's inspector general is examining how the agency's handled a key aspect of its hazardous air pollutant program.

In a project notification memo yesterday, James Hatfield, a senior manager with the IG's office, said the audit's purpose will be to determine whether EPA's "residual risk and technology review" process has "sufficiently identified and addressed any elevated cancer risks from air toxics emitted by facilities."

The project's anticipated benefits "involve reducing public health risks in a timely manner," Hatfield, head of the air directorate in the IG's Office of Audit and Evaluation, said in the memo to EPA air chief Bill Wehrum.

Under the residual risk and technology review program, EPA is supposed to assess the adequacy of air toxics standards for dozens of industrial source categories within eight years after first issuing them. The reviews are supposed to take into account both technical advances in pollution controls and fresh research into pollutants' effects that would indicate whether any risk remains to public health or the environment.

Environmental groups have repeatedly had to sue EPA to compel the agency to carry out the reviews. In advance of a kickoff meeting, Hatfield asked EPA to provide the information used to conduct risk and technology reviews for four industrial source categories, including ethylene oxide sterilization facilities.

In the Chicago area, several of those plants have been at the center of controversy over whether EPA failed to promptly inform nearby residents of the dangers associated with emissions of the cancer-causing chemical.

Under legislation introduced last month by Democratic members of the Illinois congressional delegation, EPA would have to set new standards for ethylene oxide releases (*E&E Daily*, Nov. 30).

In yesterday's memo, Hatfield said the audit stemmed from the IG's "internal planning process."

E&E: Pruitt's scandals cloud methane rule redo — senators

Pamela King, E&E News reporter

Published: Tuesday, December 18, 2018

Scandals surrounding former EPA Administrator Scott Pruitt may have tainted his rulemaking, six Senate Democrats argue in comments to the agency.

EPA this fall unveiled its proposed revisions to Obama-era guidance on methane emissions from oil and gas operations (*Greenwire*, Sept. 11). The lawmakers say the action was fatally flawed.

"The extreme and well-documented regulatory capture of the Trump EPA is evidence that it has effectively delegated its authority to the industries that have captured it, in particular, the fossil fuel industry," the lawmakers wrote.

"There is no substantive difference between an agency explicitly telling a company or industry to write a rule for it, and an agency telling a company or industry that it will write whatever rule the company or industry wants."

Democratic Sens. Sheldon Whitehouse of Rhode Island, Chris Van Hollen of Maryland, Jeff Merkley of Oregon, Cory Booker of New Jersey, Kirsten Gillibrand of New York and Ed Markey of Massachusetts signed on to the comments.

Their view that Pruitt "lacked a sufficiently open mind" echoes arguments that have been made against the Trump administration's regulatory rollbacks in the courtroom.

The legal standard is high, said Bethany Davis Noll, litigation director for New York University's Institute for Policy Integrity.

If a department head is conducting decisionmaking with a closed mind, public commenters are robbed of due process and the agency is in violation of the Administrative Procedure Act, she said.

"If you're filing public comments to an agency that refuses to consider them, then you don't have a fair chance to provide public comment," Noll said.

Twelve states also filed comments yesterday opposing the Trump revision, which is highly likely to face lawsuits when it is finalized next year. Among other arguments, the state attorneys general wrote that EPA failed to show why the Obama-era rule needed to be changed.

"Notably, EPA does not rely upon, or even reference, data provided by industry to date relating to compliance with the 2016 Standard, despite the fact that EPA has that information readily accessible," they wrote.

Industry groups like the American Petroleum Institute have supported the Trump administration's changes.

"We welcome EPA's efforts to get this right and the proposed changes could ensure that the rule is based on best engineering practices and cost-effective," Howard Feldman, API's senior director of regulatory and scientific affairs, said in a statement after the proposal was released.

The senators laid out a four-part argument as to why EPA's Trump-era revision should be withdrawn. First, Pruitt was ill-equipped to lead the rollback due to his "inalterably closed mind" about regulating methane emissions, the legislators wrote.

Second, they said, the former administrator could not be impartial. Third, the lawmakers argue, the proposed revisions are "arbitrary and capricious" under the Administrative Procedure Act. Finally, they said, EPA under Pruitt effectively delegated its rulemaking authority to industry interests.

"Pruitt's political career has been underwritten by the energy industry, the industry most affected by the proposed rule," the senators wrote.

E&E: Federal advisory on PFAS may be too weak: Mich. panel

Courtney Columbus, E&E News reporter

Published: Tuesday, December 18, 2018

The EPA health advisory level for two types of PFAS in drinking water might not be protective enough, a Michigan science advisory panel said today.

The panel's report, titled "Scientific Evidence and Recommendations for Managing PFAS Contamination in Michigan," includes a list of recommendations on how the state can address the environmental and health concerns posed by PFAS.

Per- and polyfluoroalkyl substances, or PFAS, have shown up in drinking water in several states, including Michigan. There are thousands of chemicals in the PFAS family, and they have been widely used in commercial and industrial products from nonstick cookware to firefighting foam.

Some of the thousands of PFAS have been associated with health effects. For example, the C8 Science Panel found probable links between exposure to PFOA and ulcerative colitis, thyroid disease, testicular cancer, kidney cancer and other conditions.

The six-person Michigan panel is chaired by Brown University School of Public Health epidemiology professor David Savitz. The panel aims to "provide the state with a better understanding of the available toxicological and environmental health science on PFAS and provide evidence-based recommendations that can guide Michigan's ongoing response to this emerging class of contaminants."

In 2016, EPA set a lifetime health advisory level for the sum of two types of PFAS — PFOS and PFOA — in drinking water at 70 parts per trillion. PFOS and PFOA are the most widely studied types of PFAS.

The EPA advisory isn't enforceable.

And it "may not provide a sufficient margin of safety," Savitz said during a media briefing on the report. He explained that the panelists considered evidence from both toxicologic studies done on animals and human epidemiologic studies.

Federal and other state agencies have largely based their advisory values on toxicologic studies alone, Savitz said.

"It's not an ideal situation where every state, every agency, even within the federal government is trying to reach their own judgment," he added. "I think that's a very confusing message to the public, because it makes it look like those who choose a smaller number are more concerned about their citizens than some other entity that chooses a bigger number."

The panel didn't offer its own advisory level.

One of the panelists, Christopher Lau, is chief of the Developmental Toxicology Branch in EPA's Toxicity Assessment Division.

EPA has said it will complete a national management plan on PFAS by the end of this year (*Greenwire*, May 22).

Michigan Gov. Rick Snyder (R) created the Michigan PFAS Action Response Team in 2017 and established the science advisory panel earlier this year.

The report commended Michigan leadership for working to address PFAS concerns. But PFAS science is rapidly evolving, and there aren't clear answers yet on how to address the environmental and health concerns posed by the thousands of chemicals in the PFAS family, the panel wrote.

"The research does not provide direct indications of the 'right' choices but with continuing progress, the uncertainties will be reduced enabling more informed decisions in the future," the report states.

"Although the evidence is still evolving and weak in some important areas, there is sufficient evidence from the toxicologic and epidemiologic findings to justify regulatory efforts to manage exposure for protecting human health," it says.

Inside EPA: Despite Past Filings, Sterigenics Avoids Filing Reports To EPA's TRI

Sterigenics, the sterilization company at the center of a controversy in the Chicago area over its releases of ethylene oxide (EtO), appears to have dropped its past practice of filing emissions data to EPA's Toxics Release Inventory (TRI) database for 2017 for any of its facilities, according to searches performed by *Inside EPA*.

According to EPA, the agency has posted 2017 data for hundreds of facilities in its TRI database, though searches of the database find no results for Sterigenics facilities in 2017, even though such reports were due to EPA by July 1.

By contrast, searching data in the TRI database for 2006-2016 provides emissions reports from nine Sterigenics facilities across the U.S., in California, Georgia, Illinois, North Carolina, New Mexico, New York, Texas and Utah.

For example, in 2016, the Willowbrook, IL, facility reported 4,205 pounds of EtO air releases, down from 4,899 pounds in 2015.

While such levels appear to fall below EPA's typical reporting threshold of 10,000 pounds, the company has filed such data for years but now appears to have stopped the practice

A Sterigenics spokesperson says the company is not required to file TRI reports for its facilities but did not explain why, or why the company appears to have changed its practices. Several of Sterigenics' facilities have filed TRI Form R reports annually as far back as 1987.

An EPA spokesperson gave no specifics about Sterigenics' 2017 data, but provided some scenarios in which a facility would not have to report to TRI, such as if its status changed to exempt it from reporting.

"A facility might not report for a given year because it determined that it did not meet one [of the] requirements. ... each year hundreds of facilities come into and out of the TRI regulatory scheme due to threshold determinations. Each year, EPA conducts data quality analyses and reviews changes in reporting."

Regardless, the lack of information could intensify national controversy over the adequacy of EPA's regulation of the chemical's releases and local uncertainty about the risks communities in the Chicago-area face from the company's emissions of EtO, a known carcinogen, as they await a promised EPA risk assessment in 2019.

EtO is commonly used as an intermediate to make other chemical products like detergent, antifreeze and polyester, and to sterilize medical equipment and foods, though the chemical has long been suspected of causing breast and lymph cancers.

EPA's 2016 Integrated Risk Information System (IRIS) assessment of EtO affirmed those links and classified the substance as a known carcinogen. It also recommended conservative risk values that are expected to drive stricter regulatory standards.

Sterigenics and its use of EtO to sterilize medical equipment and devices came to widespread attention in recent months after EPA's release last August of modeling emissions data in its latest National Air Toxics Assessment (NATA) covering 2014 emissions. When combined, the NATA data and IRIS assessment prompted EPA to announce earlier this year that it would review its air toxics rules for EtO.

In addition, an assessment by the Agency for Toxic Substances Disease Registry also suggested high cancer risk in the area around the Illinois plant.

EPA's Office of Inspector General (OIG) announced Dec. 17 that it is launching a review of whether EPA has taken sufficient steps to mitigate cancer risks presented by EtO and other harmful chemicals in its air toxics rules

But the chemical industry has filed a request for correction with EPA under the Information Quality Act (IQA) asking the agency to withdraw EtO data in the NATA that relied on its 2016 IRIS values for the chemical.

Stricter Rules

Officials representing communities near the Illinois Sterigenics plant, however, have been urging EPA to clamp down on the facility's emissions and to strengthen its rules governing EtO. In October, Sens. Dick Durbin (D-IL) and Tammy Duckworth (D-IL), as well as Rep. Bill Foster (D-IL), spelled out a series of steps they wanted the agency to take to more strictly regulate EtO under the Clean Air Act and the Toxic Substances Control Act.

The controversy has done little to quell local concerns, especially after EPA indicated over the Thanksgiving weekend that it may have overstated the amount of EtO in the air near the Sterigenics facility.

The agency is now gathering and analyzing emissions monitoring data as part of an effort to complete a risk analysis for the Willowbrook community, which EPA's air chief Bill Wehrum promised will be completed in 2019. In addition, the agency also recently began conducting water sampling for EtO, according to a local CBS affiliate.

But the missing TRI data could inform the pending analysis.

TRI, created by section 313 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), requires industrial facilities in a host of sectors to report annual releases of a specified set of more than 650 chemicals.

The agency places all the information in a public, searchable database on its website and also releases an annual “National Analysis” report on the latest year's data.

The law generally requires the data for the prior calendar year to be reported by July 1 of the following year and provides a \$25,000 per day penalty for missing the reporting deadline.

Last October, OIG announced that it is beginning a review of how the agency addresses situations in which companies who are required to report to TRI do so after the statutory deadline. In an Oct. 4 memo to EPA enforcement chief Susan Bodine, a top OIG official explains that the “project objective will address whether the EPA is taking enforcement actions against companies that delay required reporting of chemical release data to EPA’s TRI.”

TRI is one source for data used in NATA. While NATA is released every few years, TRI is released annually. Its data source is also uniform, allowing comparison over time and between different parts of the country -- as EPA produces with its National Assessments. Such analyses cannot be performed with NATA data, which varies in detail between states and over time in its analyses.

Sterigenics' plants are not the top producers of EtO in terms of pounds of emissions, according to TRI reports from 2006-2016. Sterigenics' facility in Santa Teresa, NM, ranks number 12 in the country for facilities that reported EtO releases to TRI between 2006 and 2016, with more than 111,300 pounds released over that decade, according to EPA's EasyRSEI Dashboard.

Sterigenics' Willowbrook facility ranks 21st in this category, with more than 57,600 pounds of emissions over that decade. But when ranked by Risk-Screening Environmental Indicators (RSEI) score, two of Sterigenics' facilities are in the top 10 for the 2006-2016 decade: Willowbrook has the fourth highest RSEI score for the nation in that decade, while Sterigenics' facility in Atlanta ranks ninth.

EPA's website explains that “RSEI scores add context to chemical release data reported by facilities to the [TRI] by considering the size of the chemical release, the fate and transport of the chemical through the environment, the size and location of the exposed population, and the chemical's toxicity. RSEI Scores are available for modeled releases and transfers (air releases, water releases, and transfers to POTWs and off-site incineration).” The scores, which are “unitless values” are “calculated as toxicity weight multiplied by the exposed population multiplied by the estimated dose.” The scores “are only meaningful in comparison to other RSEI Scores.”

In the case of the list of facilities reporting emissions of EtO in the U.S., the size of the exposures and the exposed population represent the differences in the RSEI score.

The Willowbrook facility is touting new pollution control devices it installed last summer after the release of the NATA information, which it says ensure the facility captures 99.9 percent of EtO used. The company has also questioned EPA's analysis of the monitoring results -- after EPA last month acknowledged errors in its emissions testing -- as well as the soundness of the IRIS assessment. They also argue EtO's use as a sterilizer is critical because it is the only way some medical devices can be sterilized without damaging them. -- *Maria Hegstad* (mhegstad@iwpnews.com)

POLITICO Pro: Judges skeptical of industry argument on background ozone

ERIC WOLFF12/18/2018 02:37 PM EST

The hearing centers on claims by the coal company and some Western states that those "background emissions" of ozone that occur naturally make it impossible to meet the tighter EPA standards. | Niko Duffy/POLITICO

A panel of federal judges at the U.S. Court of Appeals for the D.C. Circuit appeared skeptical of coal industry and Western states' arguments on Tuesday that EPA should have taken into account smog-causing pollution that drifts across state lines or occurs naturally when it toughened an air rule in 2015.

The hearing in the case, *Murray Energy v. EPA*, centers on claims by the coal company and some Western states that those "background emissions" of ozone that occur naturally or blow across borders make it impossible to meet the tighter EPA standards — and the litigants tussled over whether the court should prevent EPA from considering those background emissions in future rulemakings.

Story Continued Below

The Obama administration's EPA lowered the ozone standard to 70 parts per billion from 75 ppb in 2015, a level that industry groups and some states complained was too tight, but which drew criticism from some scientific advisers and green groups as a level that still posed a health threat. Coal power plants and many manufacturing facilities, along with cars and trucks, are top sources of ground-level ozone.

Judges at the hearing said the Clean Air Act overrode the arguments around how EPA addressed background pollution levels.

"The agency can't consider background ozone as an excuse for not setting a level for public health," said Judge Cornelia Pillard, an Obama appointee. "If you can't live in the air, that's the bottom line."

Pillard and Judge Thomas Griffith, a George W. Bush appointee, suggested that EPA could account for the challenges faced by particular states when it came time to write the state implementation plans required under the law.

"There are at least three references in the law about dealing with that in implementation of the [National Ambient Air Quality Standards], not in setting the primary standard," Griffith said.

The judges also probed EPA on issues such as how the agency set a secondary standard used to safeguard the natural environment at levels above those recommended by its Clean Air Science Advisory Committee. EPA has been criticized by the Supreme Court and the D.C. Circuit in the past for failing to follow the recommendations of that group of scientists whose advice it is required by law to seek.

"What justification is there for going against CASAC?" Griffith asked the government attorney. "There's a special burden when the administrator does that."

Judges also wondered where EPA drew the authority to allow some legacy ozone sources to continue emitting pollution under the new standard, and they cast doubt on the contention from environmental groups that EPA should have set a tougher primary standard than 70 ppb.

EPA's lawyer also asked the judges to leave open the broader question of whether the agency could consider background ozone emissions when writing a future ozone standard. The agency is working on the next five-year review of ozone rules now, and in an earlier filing, the agency promised a "new approach."

Pillard asked Simi Bhat, representing EPA, whether the agency had authority to consider background emissions.

"That is not addressed in the record, and it is unripe before this court," Bhat said. "EPA is looking at that question, and we ask the court to reserve the question."

An attorney for environmental groups and an attorney representing Northeastern states argued that the Supreme Court and Congress had already rejected attempts to include background emissions, and that the D.C. Circuit should instruct EPA that it may not consider background ozone.

The judges offered no hint as to whether they would address the issue in their ruling.

POLITICO Pro: EPA's Wheeler steers clear of scandals as he rewrites rulebook

By ERIC WOLFF and ALEX GUILLÉN

12/18/2018 05:00 AM EST

Andrew Wheeler is speeding ahead with a slew of deregulatory actions in his first few months as head of EPA, digging into the fine print to rewrite the agency's rulebook while skirting the type of tawdry scandals that brought down Scott Pruitt.

Since being named acting administrator in July, Wheeler has upended the agency's approach to smog-forming pollution from power plants and trucks, questioned health studies used to set safety rules for chemicals, stymied greenhouse gas pollution regulations and moved to freeze aggressive fuel efficiency standards for vehicles.

It's a contrast to his politically ambitious predecessor, Pruitt, who saw his efforts to roll back environmental regulations derailed by distractions from a string of ethical scandals, including his below-market condo rental from a lobbyist, investigations into travel expenses and efforts to procure work for his wife.

Instead, Wheeler, who spent four years at EPA early in his career and later helped conduct oversight of the agency as a congressional staffer, has harnessed EPA's machinery to delve into the legal nuances involved in unwinding pollution regulations opposed by conservatives and fossil fuel industries. President Donald Trump has indicated he intends to nominate Wheeler as the permanent EPA chief.

For Trump administration critics like former New Jersey Gov. and George W. Bush EPA Administrator Christine Todd Whitman, Wheeler is simply better at navigating to the same destination than Pruitt.

"[Pruitt] liked headlines. He liked to make grand announcements because I think he was thinking about his political future," Whitman said.

"I just know that [Wheeler] knows the process better," she said, and that makes him more effective at carrying out Trump's agenda.

Wheeler's accomplishments so far show he understands the agency's authorities and limits. And while Pruitt kept EPA's career staff at arm's length, preventing them even from entering the part of the agency's Washington, D.C., headquarters that houses the administrator's office, Wheeler often taps into the expertise in his 14,000-strong career staff.

"Wheeler appears to trust the super-smart career staff, and is making sure they have a seat at the table. That's helping him accomplish his policy goals," said one EPA career employee. "Pruitt didn't trust career staff. You can't do this alone."

While EPA civil servants tell POLITICO they may not always agree with Wheeler's policy direction, following the directives of political leaders is part of a career in government service.

EPA did not return several requests for comment.

One example of Wheeler's and Pruitt's differing approaches involves national smog standards. Pruitt had planned an outright rollback of the Obama administration's tightening of the standards, only to be stymied by a court order telling him to implement former President Barack Obama's rule. Under Wheeler, EPA decided to defend the Obama regulation.

Though environmentalists initially cheered EPA's decision, the agency quietly said in an August court filing it would move quickly to complete its upcoming ozone review — with a "new approach" that could justify later raising the nationwide pollution limit during Trump's first term.

Wheeler has also abandoned the standard agency procedure for the ozone review, declining to establish a scientific panel of ozone experts that past administrators would turn to for advice. That's drawn complaints from members of the panel of outside experts who advise him on air quality issues. (Wheeler also disbanded a separate panel of experts on soot pollution that had already started work on that pollutant.)

EPA-watchers like Paul Billings, national senior vice president for advocacy at the American Lung Association, are unhappy about the changes coming in the Clean Air Act regulation procedures.

"There's a fear the process is politicized, a fear that politics trumps science," he said.

Wheeler is using similar strategies to effect lasting change on other EPA rules.

EPA's proposal earlier this month that would make it easier to build new coal-fired power plants left environmentalists steaming, even though the agency still doesn't expect any new coal plants to be built.

But tucked inside that proposal was a footnote that raised complex, novel legal questions about whether EPA can or should regulate greenhouse gases from chemical plants, cement-makers and other industries.

Those questions don't make it clear what exactly EPA is seeking, but such a policy change might justify doing "little, or maybe nothing" for a major portion of the nation's climate-changing pollution, said Bob Perciasepe, a former Obama EPA deputy administrator.

And where a federal court rebuked Pruitt for trying to freeze Obama-era limits on methane pollution from new oil and gas wells, Wheeler took a more subtle approach, proposing to ease only some leak inspection requirements rather than outright repealing the rule. That move would mean major savings for oil and gas producers, and administration critics say it could be the first step in ending any significant regulation of well emissions.

Wheeler also vowed last month to follow up on an Obama EPA priority and consider tightening emission limits for smog-causing nitrogen oxide for 18-wheelers and other big trucks — in a move that surprised both critics and supporters of Trump's deregulatory agenda. However, the timeline is still years behind what the Obama administration had considered, and Wheeler did not commit to tightening the standard or promise to move as quickly as many smog-choked states had asked.

Another subtle move came buried in EPA's proposal last week to vastly reduce the number of streams and wetlands that fall under the Clean Water Act's protections. Language in the proposed rule's preamble could lay the groundwork for rolling those protections back even further in a final version of the rule, for instance by changing the definitions of "traditionally navigable waters."

Critics of the newly proposed Waters of the U.S. rule say Wheeler relied on legal interpretations to weaken the federal role rather than looking at the scientific data they contend was the basis for the Obama administration's 2015 rule that cemented Clean Water Act protections.

"The lack of public input, the lack of peer-reviewed studies — it's all of the elements you would expect for a document that's to serve a political purpose," said National Wildlife Federation CEO Collin O'Mara.

For administration allies, Wheeler's steady and quiet rollback of EPA regulations was a welcome change from the damaging headlines in the spring that helped drive out Pruitt. Still, some Pruitt supporters say he and Wheeler could have had an effective partnership had the White House been quicker to install Wheeler to the deputy slot.

Wheeler was nominated to the deputy administrator post in October 2017, but he wasn't confirmed until April as he waited his turn behind a slew of federal judges.

"I think a lot more could have been done a lot more quickly with that team in place," said Myron Ebell, director of the Center for Energy and Environment at the Competitive Enterprise Institute and a critic of EPA's regulations. "Pruitt was a really good advocate for the Trump agenda, but less good at accomplishing or implementing the Trump agenda. Andy is now charged with being the implementer and advocate. I think he's great at implementing."

Environmentalists, many of whom made removing Pruitt a top goal, say they have no regrets about helping push him out and leaving the job to a more effective Wheeler.

"I don't think it's helpful to the country or EPA to have bumbling corruption at the helm of the agency," said John Walke, clean air director for the Natural Resources Defense Council. "I don't buy this binary narrative that Wheeler is fundamentally more effective or knowledgeable about deregulation because his background differed from Pruitt. The infrastructure of an administration with industry serving as ventriloquist is far more influential in carrying out EPA's agenda than personalities of Scott Pruitt or Andrew Wheeler."

Ultimately, Wheeler may be a more effective administrator than Pruitt, but he is pushing the deregulatory priorities of the Trump White House, Whitman said.

"With Wheeler, you're not getting the nasty headlines about ethical behavior breaches. But the policy is still the president's policy. It's what he wants to see. He sets the tone," she said. "If he wants to starve the agency fiscally, which is happening, he can do that with the budget. If he wants to disregard the science, he can do that."

Annie Snider contributed to this report.

[VICE News: How Newark got lead in its water, and what it means for the rest of America](#)

When Newark announced it was handing out 40,000 filters to residents believed to be at risk of high lead levels in their water, it came as a surprise to some. This was in October, and for more than a year, the city had said Newark's water was “absolutely safe to drink,” while robocalls to residents assured them their water was not contaminated.

The city’s messages did include an important caveat: that “the only high lead readings were taken inside older one- and two-family homes that have lead pipes leading from the city's pure water into those homes.” But the clarifications usually came after messaging touting the water’s safety. For many residents, some of whom didn’t know what a lead service line was and whether their homes and buildings had one or not, that wasn’t the message that stuck.

“I got dozens of robocalls,” said Shakima Thomas, a Newark resident who recently discovered that her water has almost twice the action level for lead allowed by EPA rules. “What I remember from them is ‘the water is not contaminated with lead, this is not an emergency.’”

Now, recent research by the government itself suggests Newark does indeed have a water crisis on its hands. A study commissioned by the city indicates that a change in the water chemistry at their Pequannock water treatment plant caused lead service lines to leach and contaminate the water in as many as 22,000 households’ taps, starting in early 2017. And recent tests showed close to half of 180 households monitored had dangerous levels of lead in their water.

In June, the Natural Resources Defense Council — the same organization that sued Flint, Michigan, over lead in its drinking water — sued Newark, for violating drinking water rules meant to protect residents from lead. Mayor Ras Baraka denies this.

“The fact of the matter is, they're legally required to treat the water so it's not corrosive and so it doesn't leach the lead out of the pipes,” said Erik Olson, senior director of the Healthy People and Thriving Communities Program at the NRDC.

So how did Newark get to this point? Beneath the more immediate crisis playing out in the city of 285,000 people is a deeper issue: outdated water infrastructure alongside a national lead law that critics say is too weak.

A delicate balance

Balancing water chemistry is difficult, and, as Newark’s experience shows, relatively small changes can have significant impacts on lead pipes. “No two water systems are the same,” said a corrosion expert from CDM Smith, the company that conducted the study for Newark. Cities have to take into account factors ranging from fallen leaves to good and bad bacteria and the mineral content and pH of water.

In Newark, the lead likely started leaching from pipes because the city has been reducing the levels of pH in the water since 2012. According to a draft study by CDM Smith, the city was adjusting pH levels to reduce cancer-causing compounds like trihalomethanes and haloacetic acids — byproducts of the disinfectants large water systems like Newark use to eliminate harmful microbes.

Shakima Thomas uses bottled water to make

But metals, including lead, tend to be more toxic at a lower pH. So once the pH was lowered to a certain level, Newark's water corroded some of the estimated 22,000 lead pipes in the city.

Flint shows the extreme of what can go wrong when the chemistry of water — or the water source itself — changes. In April 2014, an emergency manager switched Flint's main source of water from Lake Huron to the Flint River. City water managers also failed to put in a corrosion control inhibitor, a chemical that most large community water systems add to stop lead pipes in their system from corroding. The more corrosive Flint River water caused lead to leach from lead service lines, eventually elevating lead levels in children's blood, which can cause permanent developmental damage. Ultimately, Flint was forced to replace roughly 18,000 service lines by 2020 and switched back to their original water supply.

Watch: *How Michigan's water crises turned one nonvoter into a political organizer.*

Outdated lead guidelines

While cities aren't always responsible for the lead pipes themselves, federal guidelines make them responsible for the water that goes through those pipes.

At a recent press conference, Baraka said the city has “always been in compliance” with the EPA's Lead and Copper Rule, which sets guidelines for how cities must manage their water systems

Large water systems are required to test their drinking water for lead and copper every three years. In 2017, the state of New Jersey began requiring testing twice a year. The federal government sets an “action level” for lead in drinking water at 15 parts per billion for the 90th percentile. If more than 10 percent of samples taken show elevated levels of lead, the water authority has to take action: conducting additional testing, informing the public, and, if the problem can't be solved by adjusting the water chemistry, removing the pipes.

But 15 parts per billion isn't based on health recommendations. The Centers for Disease Control states that “no safe blood lead level in children has been identified.”

The most recent tests in Newark show that 47.2 percent of houses tested exceed the action level for lead. The city is continuing to study the problem to find a solution. In the meantime, it has started to hand out filters to residents with lead lines and is ramping up their lead line replacement program.

Read more: *Childhood lead poisoning in 29 California neighborhoods rival levels in Flint.*

“There may have been a few hiccups,” says Larry Hajna, press officer at the New Jersey Department of Environmental Protection, which is also listed in the NRDC lawsuit. “But eventually the city did everything it was supposed to.” He didn’t elaborate on what hiccups there may have been.

The current Lead and Copper Rule, created in 1991, was last given minor updates in 2007. Since then, more significant proposed revisions to the rule have been delayed six times. One of the points up for discussion is whether to use a health-based lead limit. However, the EPA acknowledges that the lead level at which there are no health risks for children is zero.

The National Drinking Water Advisory Council recommended that the EPA instead establish a “household action level” based on the amount of lead in drinking water “that would raise an average, healthy infant’s blood lead level to greater than 5 micrograms per deciliter based on consumption of infant formula made with water.”

No safe level

Lead is a potent neurotoxin. When it accumulates in the body, it can cause irreversible brain damage. At high-enough levels, it can be fatal, and for children under 6, it can be especially detrimental.

Continuous low-level lead exposure in children can cause intellectual deficits and has been correlated with ADHD, delinquent behaviors and arrests, and increased rates of arrests involving violent offenses, according to a National Institute of Environmental Health Sciences study.

“We still don’t know what the long-term effects of lead really are,” said Peter Chen, an attorney with the Advocates for Children in New Jersey. “The more we learn is that even low levels have substantial health impacts.”

Some researchers say the lead levels currently allowed by the EPA are unsafe, and advocate allowing only 5 parts per billion, a benchmark set by the Food and Drug Administration for bottled water.

“Anything above 5 parts per billion is concerning,” said Marc Edwards, an environmental engineer at Virginia Tech who helped uncover the Flint lead crisis. “The Lead and Copper Rule updates are seven years overdue for revision. Fifteen parts per billion isn’t acceptable anymore.”

The tap water in almost 70 percent of Newark households registered over 5 parts per billion in the most recent round of testing.

Lead paint is historically the main source of lead found in children’s blood, but the contribution of lead from drinking water hasn’t been researched as thoroughly. The EPA estimates that drinking water can make up 20 percent or more of total exposure to lead, and that infants who primarily consume formula made with tap water could be getting up to 60 percent of their exposure to lead from drinking water. But a 2016 study by the University Hospital of Quebec found that children who are exposed to lead in water with concentrations as low as one part per billion for six months may see a 35 percent increase in the amount of lead in their blood.

Anywhere from 6 million to 10 million lead service lines still exist throughout the U.S., according to the EPA. Some cities, like Lansing, Michigan, have opted to remove them all. But it's a costly undertaking. Replacing all lead service lines can run from \$16 billion-\$80 billion, the EPA estimates.

In 2015, more than 1,000 community water systems in the United States serving almost 4 million people were in violation of the federal Lead and Copper Rule, according to a study done by the NRDC. And if the 5 parts per billion were adopted nationally, many more cities would have a crisis on their hands.

“Lead Service Lines are ticking timebombs,” said Olson. “All it takes is a change in a city's water chemistry — they change their disinfectant or a storm comes through and changes the water balance — and it affects the lead service lines. The only way you can avoid this is pulling them out.”

Cover: Shakima Thomas and her son in their Newark home.